Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-201

STATE OF OREGON,

Petitioner,

v.

CARL RAY MATHIASON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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No. .....

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

The petitioner, State of Oregon, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Oregon entered in this proceeding on May 13, 1976.

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Oregon affirming Mathiason's burglary conviction is reported at 75 Or Adv Sh 3132, 22 Or App 494, 539 P2d 1122 (1975), and is reprinted and attached hereto as Appendix C. The opinion of the Supreme Court of the State of Oregon reversing the decision of the Court of

Appeals is reported at 275 Or 1, 549 P2d 673 (1976) and reprinted and attached hereto as Appendix A.

JURISDICTION

The decision of the Supreme Court of the State of Oregon (Appendix A) was filed on May 13, 1976, and this petition for a writ of certiorari was filed within 90 days of that date, pursuant to Rule 22(1). This Court's jurisdiction is invoked under 28 USC §1257(3).

QUESTION PRESENTED

A suspect goes to a station house to meet a police officer who he knows and to be interviewed concerning a crime. He is not advised of his rights under *Miranda v. Arizona*.[1] He is free to leave at any time, and in fact is allowed to leave at the conclusion of the interview even though he has confessed to the crime. As a matter of law, must a confession obtained under such circumstances be suppressed as the product of "custodial interrogation"?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

[1] 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694 (1966).

United States Constitution, Amendment XIV, Section 1:

> ". . . [N]or shall any State deprive any person of life, liberty or property, without due process of law. . . ."

STATEMENT OF THE CASE

1. General Background.

Mathiason was convicted upon trial to the court of a Burglary in the First Degree (Oregon Revised Statutes (ORS) 164.225), which involved the theft of a stereo from a residence in Pendleton, Oregon. He appealed his conviction to the Oregon Court of Appeals, which held that the trial court did not err in overruling Mathiason's motion to suppress certain statements made to a police officer. (*See* Appendix C). Upon Mathiason's petition for review, the Oregon Supreme Court reversed the decision of the Court of Appeals by a 4-3 decision. (*See* Appendix A).

2. Facts Material to the Question Presented.

On October 29, 1974, three days after the burglary of the Reynolds home, Officer Howland of the Oregon State Police asked the victim if she knew of any suspects. She mentioned Mathiason's name (Tr 10; 14-15).[2] After

[2] As used in this Petition, "Tr" refers to the transcript of the trial in the original case; "M/S Tr" refers to the transcript of the separate hearing on Mathiason's motion to suppress his confession.

leaving the Reynolds residence, Howland went to Pendleton to contact Mathiason. Howland tried unsuccessfully several times to reach Mathiason at his home. (Tr 25-26). On November 19, 1974, Howland left his identification card in the door of Mathiason's residence. Howland wrote on the card, "Carl would you contact me? I'd like to discuss something with you." The following day, November 20, at approximately 3:30 p.m., Mathiason phoned Howland at his office. The officer asked Mathiason if he would talk to him and where it would be convenient to meet. Mathiason had no preference and Howland asked, "Would it be possible for you to just meet me at the Patrol Office here about 5:00 o'clock?" Mathiason agreed (Tr 26).

At 5:00 p.m. Mathiason arrived at the police station. Howland brought him into an office where they sat down at a desk opposite each other. (M/S Tr 23). The office had three doors, which were closed. The police radio was audible from another room. (M/S Tr 26). Howland told Mathiason he wanted to discuss the Reynolds burglary since Howland believed Mathiason was a suspect. (M/S Tr 24, 29). Howland told Mathiason that his fingerprints had been found at the scene of the burglary, which was untrue, and that if Mathiason had committed the burglary it would be presented to the district attorney for criminal prosecution. (M/S Tr 24, 29-30).

Mathiason admitted he had stolen the stereo and sold it at a secondhand store in Walla Walla, Washington. Mathiason had not been advised of his *Miranda* rights. (M/S Tr 24).

After Mathiason had confessed orally, there was a pause in the conversation, whereupon Howland told him he would like to record his statements. Howland then gave Mathiason his *Miranda* warnings. (M/S Tr 24-25). Mathiason again admitted he stole the stereo and had sold it in Walla Walla for $60. (M/S Tr 8-9). Howland said, "I am not placing Carl under arrest at this time. I'm going to release him to go about his job, return to his family." (M/S Tr 21-A). Howland testified that at the onset of the interview Mathiason was free to go at all times. (M/S Tr 27).

3. **Manner in Which Federal Question Was Raised.**

The federal question was originally raised by Mathiason's motion to suppress his statements to Officer Howland while in the police station.

> "COMES NOW the defendant, by and through his attorney, and . . . moves the Court for an Order suppressing the hereinafter described evidence seized as a result of an illegal questioning of the defendant, to-wit:
>
> "Statements made to the officers or taken from the defendent [sic] on the ground [sic] for the reason that said statements were illegal in violation of defendants [sic] rights, Amendment V. and XIV. United States Constitution."

The trial court denied the motion to suppress, on the ground that defendant was not in custody or otherwise deprived of his freedom in any significant way.

"THE COURT: Well, I think one has to consider more of the facts of this case than just what occurred on November 20th. The Affidavit of Trooper Howland and his testimony indicates that for some three weeks he had been attempting to contact the Defendant at various places and was unsuccessful in making contact; that on the 19th of November he did leave his business card at the residence of the Defendant; the business card identified the Trooper, his name and his Official position, so the Defendant knew with whom he was dealing.

"The Defendant has previously been involved in criminal activity, so this is not something that is entirely new and unique to the Defendant. He voluntarily went to the Police Station, he telephoned the Officer and agreed to come to the Station. And it should be noted that the Police Station is only a couple of blocks away from the Defendant's residence, so it isn't that he traveled a great distance.

"The Defendant was a suspect, but he was not in custody, he was not under arrest; his restraint had not been imposed against him, and certainly the law does not say that a Police Officer must advise every individual with whom he talks about criminal activity of his Miranda rights. And at the point in time that the Trooper was talking to the Defendant, he was not obligated to advise him of Miranda rights because he was not in custody.

"With reference to the alleged intoxication or being under the influence of intoxicating liquor, I believe one only has to listen to the tape to conclude that whether or not the Defendant had been drinking at some prior time, he certainly answered the questions coherently, he answered intelligently, he had

clear recollection of the events of October 26th, 1974, he knew what he had done with the stolen property, he knew where he had taken it, how much he had been paid for it, and answered all of the questions clearly, intelligently, coherently.

"And while the Court cannot say whether or not he had been drinking prior to his going to the Police Station and if he had been drinking, how much he had consumed, certainly the tape would not indicate that he had consumed such a quantity of intoxicating liquor that it could be said that he was so under the influence that he didn't comprehend what was taking place.

"The Motion to Suppress would [sic] be denied." (M/S Tr 38-40)

The question thus raised was preserved during trial by defendant's objection to the admission into evidence of defendant's tape-recorded statement to Officer Howland.

"[LeRon HOWLAND] A. This is a cassette tape recording of the conversation between myself and Carl Mathiason on November 20, 1974, between the hours of 5:05 and 5:30 P.M.

". . . .

"[The Prosecutor] Your Honor, at this time State offers State's 2 into evidence.

"[Defense Counsel:] This tape was made after he had—the Defendant had admitted to you that he had stolen the property and sold it in Walla Walla?

"A. Yes.

". . . .

"[Defense Counsel:] Again I will object, Your Honor, on the basis of the Motion to Suppress and authorities cited in there.

"THE COURT: Objection will be overruled. Exhibit admitted." (Tr 32-33).

On Mathiason's appeal to the Oregon Court of Appeals, this ruling of the trial court was assigned as error in Mathiason's brief, as follows:

"The circuit court erred in overruling defendant's motion to suppress . . . Officer Howland should have advised him of his Miranda rights prior to the time he conducted an oral interrogation at the police station. . . ." (Appellant's Brief 4, 6).

In its decision affirming Mathiason's conviction, the Oregon Court of Appeals held that, inasmuch as Mathiason had come voluntarily to the police station at the request of the state trooper, and he was free to leave at any time, he was not in "custody." The court further stated that "the mere fact that a suspect is questioned in a police station or in a police car does not necessarily mean that he is being subjected to custodial interrogation;" relying upon *Freije v. United States*, 408 F2d 100, 102 (1st Cir), *cert denied* 396 US 859 (1969) and *State v. Travis*, 250 Or 213, 441 P2d 597 (1968) (*See* Appendix C).

Mathiason sought rehearing in the Court of Appeals and discretionary review by the Oregon Supreme Court,

on the ground that police interrogation in a police station constitutes custody and requires *Miranda* warnings.

The Oregon Supreme Court granted review and, in a 4-3 decision, reversed the decision of the Court of Appeals. The court held that, notwithstanding decisions to the contrary in other jurisdictions, that the facts of this case constituted an interrogation in a "coercive environment" and that to hold otherwise would be "contrary to the rationale expressed in *Miranda*." *See* Appendix A.

The Federal question presented herein has thus been properly raised and appropriately preserved at all stages of this case.

REASONS FOR GRANTING THE WRIT

A. The Oregon Supreme Court has decided a federal question of substance not heretofore determined by this Court.

This case squarely presents the question of what is "custodial interrogation" for the purposes of *Miranda v. Arizona, supra*. This Court has never defined "custody" in the *Miranda* context, other than to indicate it is something more than being a mere "focal suspect." *Id* 384 US at 444 n 4.

Miranda established a *per se* rule—warnings must

be given to insure voluntariness—only when it is shown that the suspect was *in fact* in custody. The Oregon Supreme Court has gone beyond *Miranda* by ruling, in essence, that *all* "station house" interviews are "custodial," for *Miranda* purposes, even if the suspect knows he is free to leave at any time. Such an expansion of the *Miranda* doctrine is unwarranted. An arrest or other inherently coercive circumstances should trigger *Miranda* warnings, but voluntary presence at a police station is neither.

B. **The Oregon Supreme Court has decided an important question of federal constitutional law in a manner contrary to that of other courts, state and federal.**

As acknowledged in the majority opinion of the Oregon Supreme Court, a number of courts in other jurisdictions have found "station house" interrogation non-custodial where the suspect goes to the station house voluntarily or pursuant to an invitation or request by the police. *See, e.g., Freije v. United States, supra; United States v. Scully*, 415 F2d 680 (2d Cir 1969); *United States v. Delamarra*, 275 F Supp 1 (DC Dist Col 1967) (guard's briefing room at Howard University); *People v. Yuke*, 25 NY2d 585, 256 NE2d 172 (1969); *People v. Hill*, 70 Cal 2d 678, 76 Cal Rptr 225, 452 P2d 329 (1969), *cert denied* 406 US 971 (1972); *Commonwealth v. Fisher*, 354 Mass 549, 238 NE2d 525 (1968); *Commonwealth v. Feldman*, 432 Pa 428, 248 A2d 1 (1968).

The conflict between these decisions and the present case merits resolution by this Court.

CONCLUSION

The Oregon Supreme Court's decision needlessly and improperly expands upon the *Miranda* doctrine, foreclosing any real analysis of voluntariness and denying to the state valuable and properly obtained evidence. Accordingly, and for the reasons given above, a writ of certiorari should issue to review this judgment and opinion of the Oregon Supreme Court.

Respectfully submitted,

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August, 1976

APPENDIX A

OPINION OF THE OREGON SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF OREGON

In Banc

STATE OF OREGON,

Respondent,

v.

CARL RAY MATHIASON,

Petitioner.

On review from the Court of Appeals.

Argued and submitted December 3, 1975.

Gary D. Babcock, Public Defender, Salem, argued the cause for petitioner. With him on the briefs was Gary L. Hooper, Salem.

W. Michael Gillette, Solicitor General, Salem, argued the cause for respondent. With him on the brief were Lee Johnson, Attorney General, and Thomas H. Denney, Assistant Attorney General, Salem.

Reversed and remanded.

DENECKE, J.

The issue is whether defendant's confession was admissible. He initially confessed before he was given his

Miranda rights. The state contends the confession was not obtained by "custodial interrogation." The trial court admitted evidence of the confession. The Court of Appeals affirmed. 22 Or App 494, 539 P2d 1122 (1975). We granted defendant's petition for review.

An officer of the State Police investigated a theft at a residence near Pendleton. He asked the lady of the house which had been burglarized if she suspected anyone. She replied that the defendant was the only one she could think of. The defendant was a parolee and a "close associate" of her son. The officer tried to contact defendant on three or four occasions with no success. Finally, about 25 days after the burglary, the officer left his card at defendant's apartment with a note asking him to call because "I'd like to discuss something with you." The next afternoon the defendant did call. The officer asked where it would be convenient to meet. The defendant had no preference; so the officer asked if the defendant could meet him at the state patrol office in about an hour and a half, about 5:00 p.m. The patrol office was about two blocks from defendant's apartment. The building housed several state agencies.

The officer met defendant in the hallway, shook hands and took him into an office. The defendant was told he was not under arrest. The door was closed. The two sat across a desk. The police radio in another room could be

heard. The officer told defendant he wanted to talk to him about a burglary and that his truthfulness would possibly be considered by the district attorney or judge. The officer further advised that the police believed defendant was involved in the burglary and defendant's fingerprints were found at the scene. The defendant sat for a few minutes and then said he had taken the property. This occurred within five minutes after defendant had come to the office. The officer then advised defendant of his *Miranda* rights and took a taped confession.

At the end of the taped conversation the officer told defendant he was not arresting him at this time; he was released to go about his job and return to his family. The officer said he was referring the case to the district attorney for him to determine whether criminal charges would be brought. It was 5:30 p.m. when the defendant left the office.

The officer gave all the testimony relevant to this issue. The defendant did not take the stand either at the hearing on the motion to suppress or at the trial.

Miranda v. Arizona, 384 US 436, 444, 86 S Ct 1602, 16 L Ed2d 694, 10 ALR3d 974 (1966), held:

> "* * * [T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. * * *." (Footnotes not included.)

The majority in *Miranda* then went on to state that to secure the privilege against self-incrimination the accused must at least be advised of his constitutional rights, such as to remain silent, etc.

The most compulsive feature of the in-custody interrogation, the feature singled out by the majority in *Miranda*, is a person's belief that he cannot leave or break off the interrogation.

In *State v. Travis*, 250 Or 213, 441 P2d 597 (1968), a majority of this court interpreted *Miranda* to require, "that the police are restricted in interrogating a person suspected of committing a crime only if the questioning takes place in a 'coercive environment.' " 250 Or at 218. We believe this is an accurate paraphrase of the idea expressed by the majority in *Miranda* when the Chief Justice wrote about "the compelling atmosphere inherent in the process of in-custody interrogation."

We hold the interrogation took place in a "coercive environment." The parties were in the offices of the State Police; they were alone behind closed doors; the officer informed the defendant he was a suspect in a

theft and the authorities had evidence incriminating him in the crime; and the defendant was a parolee under supervision. We are of the opinion that this evidence is not overcome by the evidence that the defendant came to the office in response to a request and was told he was not under arrest.

The rationale of our decision is undoubtedly contrary to some decisions from other jurisdictions. *People v. Yuke*, 25 NY2d 585, 307 NY Supp2d 857, 256 NE2d 172 (1969), is an example. Three judges violently dissented in that case.

The facts in the present case are not as gross as they were in the New York case; however, we are of the opinion that to hold that the confession in the present case was not obtained as a result of "custodial interrogation" would be contrary to the rationale expressed in *Miranda*.

The state contends that whether the confession was a result of custodial interrogation is a question of fact, there is evidence to substantiate the trial court's finding and, therefore, we must affirm. The state argues, for example, that based upon the manner in which the officer testified, the trial court could have found that when the officer told the defendant he was not under arrest he truthfully expressed the state of his mind.

In *Ball v. Gladden*, 250 Or 485, 443 P2d 621 (1968), we stated the principles governing when the trial court's findings are controlling. In the present case we conclude that accepting the "historical facts" as favorable to the state as the trial court could find them, the confession was the product of "custodial interrogation."

Reversed and remanded.

HOWELL, J., dissenting.

I dissent.

The issue presented is whether "there was evidence of sufficient historical facts to sustain the trial court's holding." *State v. Karcher*, 252 Or 564, 566, 451 P2d 110 (1969).

When the defendant called the State Police officer, the defendant was asked where it would be convenient to meet and, as defendant had no preference, it was agreed the defendant would go to the State Patrol office. The officer told defendant he was not under arrest. After defendant admitted the theft and was given the *Miranda* warnings, the officer told him he was not arresting him and that he was free to return to his family. The entire interview lasted only one-half hour.

The defendant did not testify. I believe the above facts are sufficient to support the holding of the trial court and the Court of Appeals. Without abdicating our

responsibility to determine whether the facts meet state and federal constitutional requirements, *see Ball v. Gladden*, 250 Or 485, 443 P2d 621 (1968), I believe that we should give substantial consideration to the findings of the trial judge who saw and heard the witnesses. *See State v. Pressel*, 2 Or App 477, 484-85, 468 P2d 915 (1970) (Schwab, C. J., dissenting).

Tongue, J. and Bryson, J., join in this dissent.

APPENDIX B

STATE OF OREGON
SUPREME COURT

Mandate

STATE OF OREGON,	)	Appeal from
	)	UMATILLA
Respondent	)	County
v.	)	No. 5838
	)	On Review
CARL RAY MATHIASON,	)	from the
	)	Court of
Petitioner	)	Appeals

This cause on December 3, 1975, having been duly argued and submitted upon questions arising on petition for review from the Court of Appeals, and the court having fully considered said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

IT THEREFORE IS ORDERED and ADJUDGED that the decision of the Court of Appeals is reversed in conformity with the opinion of the court herein and the cause remanded to the Court of Appeals for entry of order in accordance herewith.

ENTERED at Salem, Oregon, this 13th day of May, 1976.

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON, *Respondent, v.* CARL RAY MATHIASON (No. 5838), *Appellant.*

Appeal from Circuit Court, Umatilla County.

Henry Kaye, Judge.

Argued and submitted August 20, 1975.

Gary D. Babcock, Public Defender, Salem, argued the cause and filed the brief for appellant.

W. Michael Gillette, Solicitor General, Salem, argued the cause for respondent. With him on the brief were Lee Johnson, Attorney General, and Thomas H. Denney, Assistant Attorney General, Salem.

Before Schwab, Chief Judge, and Langtry and Fort, Judges.

Affirmed.

SCHWAB, C. J.

Defendant, having been convicted of burglary in the first degree, contends that the court erred in overruling defendant's motion to suppress his statements to the police because his original admission was the result of

custodial interrogation not preceded by advice of his *Miranda* rights. We find no error.

Defendant came voluntarily to the police station at the request of the state trooper. He was free to leave at any time. The mere fact that a suspect is questioned in a police station or in a police car does not necessarily mean that he is being subjected to custodial interrogation. *Freije v. United States*, 408 F2d 100, 102 (1st Cir), *cert denied* 396 US 859 (1969); *State v. Travis*, 250 Or 213, 441 P2d 597 (1968); *State ex rel Juv. Dept. v. Brown*, 99 Adv Sh 2462, — Or App —, 528 P2d 2462 (1974), Sup Ct *rev denied, cert denied* — US —, 44 L Ed 2d 672 (1975). The historical facts set forth in the trial court's ruling are supported by the record and we regard them as settled. *Ball v. Gladden*, 250 Or 485, 443 P2d 621 (1968).

In the course of the interrogation which preceded defendant's admission the state trooper questioning defendant falsely told the defendant that his fingerprints had been found at the burglary scene. While such information is relevant evidence going to the issue of voluntariness, it does not conclusively demonstrate lack of voluntariness. *Frazier v. Cupp*, 394 US 731, 739, 89 S Ct 1420, 22 L Ed 2d 684 (1969); *State v. Oakes*, 99 Adv Sh 2217, 2223, — Or App —, 527 P2d 418 (1974).

Affirmed.